THE HONORABLE JAMAL N. WHITEHEAD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PLAINTIFF PACITO; PLAINTIFF ESTHER; PLAINTIFF JOSEPHINE; PLAINTIFF SARA; PLAINTIFF ALYAS; PLAINTIFF MARCOS; PLAINTIFF AHMED; PLAINTIFF RACHEL; PLAINTIFF ALI; HIAS, INC.; CHURCH WORLD SERVICE, INC.; and LUTHERAN COMMUNITY SERVICES NORTHWEST,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; MARCO RUBIO, in his official capacity as Secretary of State; KRISTI NOEM, in her official capacity as Secretary of Homeland Security; ROBERT F. KENNEDY, JR., in his official capacity as Secretary of Health and Human Services,

Defendants.

Case No. 2:25-cv-255-JNW

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO STAY PRELIMINARY INJUNCTION PENDING APPEAL

NOTE ON MOTION CALENDAR:
APRIL 18, 2025

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INTRODUCTION

Defendants' second motion to stay a Court order stopping the unlawful dismantling of the U.S. Refugee Admissions Program ("USRAP"), *see* Dkt. No. 79 ("Second PI Order"), must be denied. In addition to rehashing arguments Defendants have already lost, their new motion, *see* Dkt. No. 82 ("Mot."), blatantly misrepresents the Ninth Circuit's stay order of March 25, 2025, *see* Order, *Pacito v. Trump*, No. 25-1313 (9th Cir. Mar. 25, 2025), Dkt. No. 28.1 ("Ninth Circuit Order"), and how it relates to this Court's first preliminary-injunction order. This issue is not merely academic: Defendants are now relying on their erroneous and unsupportable interpretation to prevent the organizational Plaintiffs from resuming their USRAP work under their cooperative agreements, as required by the Court's second preliminary-injunction order. Yesterday, the State Department sent a "Notice of Intent to Reinstate Award" to Plaintiffs Church World Service, Inc. ("CWS") and HIAS, Inc. ("HIAS"), but these notices stated that, "[u]pon reinstatement, the referenced award(s) will be suspended immediately," citing only the Ninth Circuit's stay order as authority for this new funding suspension. Exs. 1–2.*

Defendants' motion—and, for that matter, the notices sent to CWS and HIAS—rely on a series of material omissions.

First, Defendants ignore that the Ninth Circuit's order discusses *only* the President's power under section 212(f) of the Immigration and Nationality Act, *see* 8 U.S.C. § 1182(f)—and did not evaluate or even mention Plaintiffs' Administrative Procedure Act ("APA") challenge to Defendants' USRAP funding suspension. This is unsurprising given that Defendants informed the Ninth Circuit that Plaintiffs' challenges to the suspension of cooperative agreements were "irrelevant" in light of the post-appeal termination of those agreements, Reply in Support of Emergency Motion Pursuant to Circuit Rule 27-3 at 10–11, *Pacito v. Trump*, No. 25-1313 (9th Cir. Mar. 18, 2025), Dkt. No. 17.1 ("Ninth Circuit Stay Reply"), such that "[a]ny injury Plaintiffs might have suffered . . . no longer exists . . . and [is] therefore no longer redressable," Emergency

* Exhibits are attached to the declaration of Jonathan P. Hawley, filed concurrently.

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Motion Pursuant to Circuit Rule 27-3 for Stay Pending Appeal at 17, *Pacito v. Trump*, No. 25-1313 (9th Cir. Mar. 8, 2025), Dkt. No. 5.2 ("Ninth Circuit Stay Mot.")—thereby instructing the court to treat the USRAP funding suspension as moot. At any rate, the reach and scope of section 212(f) has no bearing on *agency* decisions to terminate the cooperative agreements with resettlement agencies based on the agency's unexplained interpretation of an executive order. Plaintiffs' new claims challenging the funding terminations are likely to succeed on the merits, as the Court has already held: the abrupt termination of the cooperative agreements violates the APA and undermines the careful scheme Congress created with the Refugee Act of 1980.

Second, Defendants ignore what the Ninth Circuit *did* order: in expressly declining to stay the processing of refugees conditionally approved for refugee status prior to January 20, 2025, the Ninth Circuit mandated that Defendants continue "refugee processing, decisions, and admissions" for individuals who were conditionally approved for refugee status at the time the Refugee Ban EO was issued. Ninth Circuit Order 1; *see also* Dkt. No. 45 ("First PI Order") at 61. But that continued processing of refugees conditionally approved prior to January 20 cannot be effectuated without resettlement partners, and a stay of this Court's funding-termination injunction would leave whole regions of the world without functioning Resettlement Support Centers ("RSCs"). As Defendants themselves have repeatedly stated, the State Department's abrupt termination of resettlement agencies' cooperative agreements rendered the USRAP incapable of processing and assisting the many thousands of conditionally approved refugees whose applications must proceed under the Ninth Circuit's order. Complying with this Court's second preliminary-injunction order to undo the terminations is presently the only method to implement the Ninth Circuit's mandate and the portions of this Court's first preliminary-injunction order that remain in effect. Defendants' stay motion aims to render the orders of this Court and the Ninth Circuit completely ineffective, and for this reason alone should be denied.

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Third, the ongoing and irreparable harm to the individual and organizational Plaintiffs continues unabated, and Defendants have not and cannot articulate any harm to themselves or the public interest if they are obliged to comply with the congressional mandates of the APA.

Consistent with the Ninth Circuit's order, this Court's March 24 injunction requires reinstatement of funding to insure that individuals conditionally approved for refugee status prior to January 20, 2025 can proceed through the USRAP. Plaintiffs therefore respectfully request that the Court deny the stay motion.

ARGUMENT

"The party requesting a stay bears the burden of showing that the circumstances justify an exercise of [judicial] discretion." *Washington v. Trump*, 847 F.3d 1151, 1164 (9th Cir. 2017) (quoting *Nken v. Holder*, 556 U.S. 418, 433–34 (2009)). Courts consider four factors in determining whether to exercise their discretion to stay an order pending an appeal: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken*, 556 U.S. at 434 (cleaned up). Likelihood of success and irreparable injury "are the most critical." *Mi Familia Vota v. Fontes*, 111 F.4th 976, 981 (9th Cir. 2024).

Here, no factor favors the issuance of a stay.

I. Defendants are unlikely to succeed on the merits of their appeal.

Defendants have made no showing that they are likely to succeed in their appeal of Plaintiffs' APA claims. There is no defense available to them for abruptly terminating the resettlement agencies' cooperative agreements under the APA, and they do not attempt one. Instead, they argue that they are likely to succeed because, in their deliberately vague phrasing, the Ninth Circuit stayed this Court's February 28 injunction "as to funding issues." Mot. 3.

This argument is disingenuous at best. The Ninth Circuit made no analysis of Plaintiffs' APA claims and did not directly address Defendants' suspension of USRAP funding from January

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24, 2025 through February 26, 2025. *See* Ninth Circuit Order 1–2. In fact, Defendants specifically and repeatedly asked the Ninth Circuit and this Court to find that the suspension of cooperative agreements was "no longer redressable," Ninth Circuit Stay Mot. 17, "no longer in effect," Dkt. No. 75 ("JSR") at 11, and "irrelevant," Ninth Circuit Stay Reply 10–11, precisely because they had terminated the agreements within one day of the Court's first preliminary-injunction ruling from the bench. To omit these repeated representations and claim now that the Ninth Circuit concluded that Defendants were likely to succeed on the funding suspension—when *Defendants themselves* argued that the suspension no longer imposed a redressable injury—reads words into the Ninth Circuit's order that simply aren't there.

Other than alluding to (though not actually pressing) their Tucker Act argument that has been analyzed thoroughly and rejected by this Court twice, *see* Mot. 1; Second PI Order 8–13; First PI Order 38–41, Defendants fail to make any substantive arguments to undermine the Court's conclusion that the funding terminations are properly before it, *see* Second PI Order 9–14. Nor do they grapple with the Court's determination that the APA applies because "the Government's statutory obligation to carry out the USRAP is mandatory" rather than discretionary. *Id.* at 15. They make no attempt to address the Court's conclusion that the terminations likely violate the APA because they are contrary to the Refugee Act and 8 U.S.C. § 1522(b). *Id.* at 18–25. And they fail to analyze or even mention the Court's detailed findings that the State Department's funding terminations, effectuated without any "factual findings or bases" or any evaluation of the resettlement agencies' "reliance interests," were arbitrary and capricious. *Id.* at 25–27.

Defendants' arguments as to the "practical" need to stay the injunction are similarly oblivious to the plain meaning of the Ninth Circuit's stay order. Mot. 2. The Ninth Circuit specifically denied Defendants' motion to stay the February 28 injunction to the extent it applied to refugees who were conditionally approved for refugee status by the U.S. Citizenship and Immigration Services prior to January 20, 2025. *See* Ninth Circuit Order 1. As Defendants conceded to this Court in their status report of March 10, 2025, there has been "significant

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deterioration of functions throughout the USRAP." Dkt. No. 62 at 2. As further discussed in the parties' joint status report, because of the terminations of the cooperative agreements, the State Department has no currently operative infrastructure to process refugee admissions. *See* JSR 11 (stating that "major portions of the [USRAP] that is operated through cooperative agreements have been terminated"); *id.* at 12 (noting that "IOM and CWS *may* resume operating the RSCs" and that the "State Department is also exploring the feasibility of transferring files for refugees covered by terminated RSCs to operative RSCs" (emphasis added)). As of March 14, CWS did not have confirmation that it could resume operations of its RSCs abroad. *See id.* Instead, the State Department is "exploring the feasibility of transferring files for refugees covered by terminated RSCs to operative RSCs, with the understanding that IOM will continue to facilitate travel and medical screening and may need additional funds to complete this work." *Id.* By Defendants' own admission, it will take "at least three months" to arrange for a new resettlement agency "to provide reception and placement benefits aligned with administration policies." *Id*. at 13–14. The difficulties Defendants have identified in complying with the Court's first preliminary injunction and their statutory obligations—difficulties that are entirely of their own making—are no less obstacles to complying with the Ninth Circuit's stay order. Indeed, for this reason, the practical consequences of the Ninth Circuit's order strongly favor *denying* Defendants' stay motion because this Court's second preliminary-injunction order provides the only practicable way for the still-active portions of the earlier February 28 injunction to take effect.

It is unclear what meaning Defendants attach to their invocation of 48 C.F.R. § 49.102(d), *see* Mot. 2, which sets forth the need for contracting parties to "consent" to reinstatement of cooperative agreements; nothing in this Court's order bars Defendants from obtaining it, as the organizational Plaintiffs and fellow resettlement agencies are highly unlikely to refuse the full reinstatement of their abruptly terminated agreements. And, as noted above, Defendants have sent new notices to CWS and HIAS, which, in addition to requiring consent to reinstate their agreements, purport to immediately suspend any reinstated agreements. *See* Exs. 1–2.

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Finally, *Trump v. Hawaii*, 585 U.S. 667 (2018), has no bearing on this Court's order to enjoin the funding terminations because they violate the APA. It was the State Department, *not* the President, that terminated the cooperative agreements, and section 212(f) does not give it or any other federal agency the authority to do so. Indeed, Executive Order 14169, on which Defendants rely as authority for the suspension of funding to the USRAP, did not purport to be issued pursuant to section 212(f). *See* 90 Fed. Reg. 8,619 (Jan. 20, 2025).

Ultimately, it was Defendants who urged this Court *and* the Ninth Circuit to treat the injunction of the funding suspensions as moot. Indeed, their own sworn evidence indicated that the "pause" on funding was for purpose of review, and that the funding suspensions ended when Secretary Rubio concluded his review of the relevant grants on February 26, 2025. *See* Dkt. No. 49 at 5–6. In response to Plaintiffs' motion for an emergency hearing, Defendants filed declarations from State Department officials averring that "the processing for individually reviewing each outstanding State Department grant and federal assistance award obligation has concluded" and that "Secretary Rubio has now made a final decision with respect to each such award, affirmatively electing to either retain the award or terminate as inconsistent with the national interests and foreign policy of the United States." Dkt. No. 49-1 ¶¶ 1–2; *see also* Dkt. No. 49-2 ¶ 4. One State Department official specifically affirmed that "no USAID obligations [i.e., grants subject to the 'pause' directed by Executive Order 14169] will remain in a suspended state." Dkt. No. 49-1 ¶ 1. The Ninth Circuit in turn issued its stay only after this Court enjoined the terminations and—following Defendants' suggestion that the funding suspension no longer presented a redressable injury—did not address the claims related to funding *at all*. Defendants now seize on the Ninth Circuit's understandable silence as a holding that Plaintiffs are unlikely to succeed on their APA claims. Simply put, Defendants can't have it both ways: the Ninth Circuit didn't address the funding suspension because Defendants told that court it couldn't, and Defendants should not be allowed to manufacture a ruling they discouraged the Ninth Circuit from making.

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II. Defendants will suffer no harm in the absence of a stay, while Plaintiffs' irreparable harms continue to grow every day that the injunction does not take effect.

Defendants articulate no harm, much less irreparable harm, in their motion, which alone is fatal. Nor can they, as there is no harm to Defendants where the Court's order only "return[s] the nation temporarily to the position it has occupied for many previous years." *Washington*, 847 F.3d at 1168. Defendants are obligated by the Ninth Circuit's stay order to resume processing thousands of conditionally approved refugees and have no practical means to do so without the assistance of refugee-resettlement agencies whose painstakingly built infrastructures and expertise allow for the smooth functioning of the USRAP. Defendants might not *like* this court-ordered obligation, but their displeasure does not constitute irreparable harm.

In contrast, as the Court has recognized, the harms to Plaintiffs continue to cascade. In detailed declarations in support of their supplemental preliminary-injunction motion, Plaintiffs described at length the irreparable harm they face from the funding terminations. *See* Dkt. No. 58-2 ¶¶ 12–14 (documenting layoffs by HIAS of hundreds of employees and inability to assist thousands of clients, including 1,425 who are "'travel-ready' and just awaiting boarding documents and flight plans to enter the United States"); Dkt. No. 58-3 ¶¶ 13–14 (describing planned layoffs at CWS and loss of services to 4,235 refugees in the United States). Since then, these harms have only increased. *See* JSR 2–4 (describing failure to book or re-book travel for travel-ready refugees); *id.* at 7–10 (detailing organizational Plaintiffs' layoffs of hundreds of employees and loss of critical services to refugees nationwide); Dkt. No. 68-1 ¶¶ 11–13 (detailing lack of staff at HIAS's Resettlement Support Center in Austria "to do the core work of processing approved refugee applications to completion"); *id.* ¶¶ 14–25 (describing situation of travel-ready refugees as well as inability of Iranian religious minorities to access available visas to travel to Europe).

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III. The public interest supports enforcement of the Court's preliminary-injunction order.

Finally, maintaining the Court's second preliminary injunction pending an appeal serves the public interest and allows for the orderly administration of the portions of the Court's first injunction that the Ninth Circuit has not stayed. It is certainly *not* in the public interest to allow Defendants to violate the APA and erect ever-new obstacles to admitting refugees who have been conditionally approved under Congress's carefully constructed scheme. As Plaintiffs have argued—and the Court previously agreed—"the public has an interest in ensuring that the [laws] enacted by their representatives are not imperiled by executive fiat." *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 679 (9th Cir. 2021) (cleaned up).

CONCLUSION

Defendants have not satisfied their burden to justify the extraordinary relief they seek, and their stay motion should be denied.

* * *

I certify that this opposition contains 2,616 words, in compliance with the Local Civil Rules.

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